

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

OCTOBER 9, 1972.—Ordered to be printed

Mr. GARMATZ, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 9727]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9727), to regulate the dumping of material in the oceans, coastal, and other waters, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment to the text of the bill insert the following; *That this Act may be cited as the "Marine Protection, Research, and Sanctuaries Act of 1972"*.

FINDING, POLICY, AND PURPOSE

SEC. 2. (a) Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

To this end, it is the purpose of this Act to regulate the transportation of material from the United States for dumping into ocean waters, and the dumping of material, transported from outside the United States, if the dumping occurs in ocean waters over which the United States has jurisdiction or over which it may exercise control, under accepted principles of international law, in order to protect its territory or territorial sea.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(a) *"Administrator" means the Administrator of the Environmental Protection Agency.*

(b) *"Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).*

(c) *"Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste: but such term does not mean oil within the meaning of section 11 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1161) and does not mean sewage from vessels within the meaning of section 13 of such Act (33 U.S.C. 1163).*

(d) *"United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.*

(e) *"Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.*

(f) *"Dumping" means a disposition of material: Provided, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1151-1175), under the provisions of section 13 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 407), or under the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, et seq.), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: Provided further, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: And provided further, That it does not include the deposit of oyster shells or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.*

(g) *"District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.*

(h) "Secretary" means the Secretary of the Army.

(i) "Dredged material" means any material excavated or dredged from the navigable waters of the United States.

(j) "High-level radioactive waste" means the aqueous waste resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated waste from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuels, or irradiated fuel from nuclear power reactors.

(k) "Transport" or "transportation" refers to the carriage and related handling of any material by a vessel, or by any other vehicle, including aircraft.

TITLE I—OCEAN DUMPING

PROHIBITED ACTS

SEC. 101. (a) No person shall transport from the United States any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or except as may be authorized in a permit issued under this title, and subject to regulations issued under section 108 hereof by the Secretary of the Department in which the Coast Guard is operating, any other material for the purpose of dumping it into ocean waters.

(b) No person shall dump any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material, transported from any location outside the United States, (1) into the territorial sea of the United States, or (2) into a zone contiguous to the territorial sea of the United States, extending to a line twelve nautical miles seaward from the base line from which the breadth of the territorial sea is measured, to the extent that it may affect the territorial sea or the territory of the United States.

(c) No officer, employee, agent, department, agency, or instrumentality of the United States shall transport from any location outside the United States any radiological, chemical, or biological warfare agent or any high-level radioactive waste, or, except as may be authorized in a permit issued under this title, any other material for the purpose of dumping it into ocean waters.

ENVIRONMENTAL PROTECTION AGENCY PERMITS

SEC. 102. (a) Except in relation to dredged material, as provided for in section 103 of this title, and in relation to radiological, chemical, and biological warfare agents and high-level radioactive waste, as provided for in section 101 of this title, the Administrator may issue permits, after notice and opportunity for public hearings, for the transportation from the United States or, in the case of an agency or instrumentality of the United States, for the transportation from a location outside the United States, of material for the purpose of dumping it into ocean waters, or for the dumping of material into the waters described in section 101(b), where the Administrator determines that such dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

The Administrator shall establish and apply criteria for reviewing and evaluating such permit applications, and, in establishing or revising such criteria, shall consider, but not be limited in his consideration to, the following:

- (A) The need for the proposed dumping.
- (B) The effect of such dumping on human health and welfare, including economic, esthetic, and recreational values.
- (C) The effect of such dumping on fisheries resources, plankton, fish, shellfish, wildlife, shore lines and beaches.
- (D) The effect of such dumping on marine ecosystems, particularly with respect to—
 - (i) the transfer, concentration, and dispersion of such material and its byproducts through biological, physical, and chemical processes,
 - (ii) potential changes in marine ecosystem diversity, productivity, and stability, and
 - (iii) species and community population dynamics.
- (E) The persistence and permanence of the effects of the dumping.
- (F) The effect of dumping particular volumes and concentrations of such materials.
- (G) Appropriate locations and methods of disposal or recycling, including land-based alternatives and the probable impact of requiring use of such alternate locations or methods upon considerations affecting the public interest.
- (H) The effect on alternate uses of oceans, such as scientific study, fishing, and other living resource exploitation, and non-living resource exploitation.
- (I) In designating recommended sites, the Administrator shall utilize wherever feasible locations beyond the edge of the Continental Shelf.

In establishing or revising such criteria, the Administrator shall consult with Federal, State, and local officials, and interested members of the general public, as may appear appropriate to the Administrator. With respect to such criteria as may affect the civil works program of the Department of the Army, the Administrator shall also consult with the Secretary. In reviewing applications for permits, the Administrator shall make such provision for consultation with interested Federal and State agencies as he deems useful or necessary. No permit shall be issued for a dumping of material which will violate applicable water quality standards.

(b) The Administrator may establish and issue various categories of permits, including the general permits described in section 104(c).

(c) The Administrator may, considering the criteria established pursuant to subsection (a) of this section, designate recommended sites or times for dumping and, when he finds it necessary to protect critical areas, shall, after consultation with the Secretary, also designate sites or times within which certain materials may not be dumped.

(d) No permit is required under this title for the transportation for dumping or the dumping of fish wastes, except when deposited in harbors or other protected or enclosed coastal waters, or where the Administrator finds that such deposits could endanger health, the environment, or ecological systems in a specific location. Where the

Administrator makes such a finding, such material may be deposited only as authorized by a permit issued by the Administrator under this section.

CORPS OF ENGINEERS PERMITS

SEC. 103. (a) Subject to the provisions of subsections (b), (c), and (d) of this section, the Secretary may issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it into ocean waters, where the Secretary determines that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(b) In making the determination required by subsection (a), the Secretary shall apply those criteria, established pursuant to section 102(a), relating to the effects of the dumping. Based upon an evaluation of the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States, the Secretary shall make an independent determination as to the need for the dumping. The Secretary shall also make an independent determination as to other possible methods of disposal and as to appropriate locations for the dumping. In considering appropriate locations, he shall, to the extent feasible, utilize the recommended sites designated by the Administrator pursuant to section 102(c).

(c) Prior to issuing any permit under this section, the Secretary shall first notify the Administrator of his intention to do so. In any case in which the Administrator disagrees with the determination of the Secretary as to compliance with the criteria established pursuant to section 102(a) relating to the effects of the dumping or with the restrictions established pursuant to section 102(c) relating to critical areas, the determination of the Administrator shall prevail. Unless the Administrator grants a waiver pursuant to subsection (d), the Secretary shall not issue a permit which does not comply with such criteria and with such restrictions.

(d) If, in any case, the Secretary finds that, in the disposition of dredged material, there is no economically feasible method or site available other than a dumping site the utilization of which would result in non-compliance with the criteria established pursuant to section 102(a) relating to the effects of dumping or with the restrictions established pursuant to section 102(c) relating to critical areas, he shall so certify and request a waiver from the Administrator of the specific requirements involved. Within thirty days of the receipt of the waiver request, unless the Administrator finds that the dumping of the material will result in an unacceptably adverse impact on municipal water supplies, shell-fish beds, wildlife, fisheries (including spawning and breeding areas), or recreational areas, he shall grant the waiver.

(e) In connection with Federal projects involving dredged material, the Secretary may, in lieu of the permit procedure, issue regulations which will require the application to such projects of the same criteria, other factors to be evaluated, the same procedures, and the same requirements which apply to the issuance of permits under subsections (a), (b), (c), and (d) of this section.

PERMIT CONDITIONS

SEC. 104. (a) Permits issued under this title shall designate and include (1) the type of material authorized to be transported for dumping or to be dumped; (2) the amount of material authorized to be transported for dumping or to be dumped; (3) the location where such transport for dumping will be terminated or where such dumping will occur; (4) the length of time for which the permits are valid and their expiration date; (5) any special provisions deemed necessary by the Administrator or the Secretary, as the case may be, after consultation with the Secretary of the Department in which the Coast Guard is operating, for the monitoring and surveillance of the transportation or dumping; and (6) such other matters as the Administrator or the Secretary, as the case may be, deems appropriate.

(b) The Administrator or the Secretary, as the case may be, may prescribe such processing fees for permits and such reporting requirements for actions taken pursuant to permits issued by him under this title as he deems appropriate.

(c) Consistent with the requirements of sections 102 and 103, but in lieu of a requirement for specific permits in such case, the Administrator or the Secretary, as the case may be, may issue general permits for the transportation for dumping, or dumping, or both, of specified materials or classes of materials for which he may issue permits, which he determines will have a minimal adverse environmental impact.

(d) Any permit issued under this title shall be reviewed periodically and, if appropriate, revised. The Administrator or the Secretary, as the case may be, may limit or deny the issuance of permits, or he may alter or revoke partially or entirely the terms of permits issued by him under this title, for the transportation for dumping, or for the dumping, or both, of specified materials or classes of materials, where he finds that such materials cannot be dumped consistently with the criteria and other factors required to be applied in evaluating the permit application. No action shall be taken under this subsection unless the affected person or permittee shall have been given notice and opportunity for a hearing on such action as proposed.

(e) The Administrator or the Secretary, as the case may be, shall require an applicant for a permit under this title to provide such information as he may consider necessary to review and evaluate such application.

(f) Information received by the Administrator or the Secretary, as the case may be, as a part of any application or in connection with any permit granted under this title shall be available to the public as a matter of public record, at every stage of the proceeding. The final determination of the Administrator or the Secretary, as the case may be, shall be likewise available.

(g) A copy of any permit issued under this title shall be placed in a conspicuous place in the vessel which will be used for the transportation or dumping authorized by such permit, and an additional copy shall be furnished by the issuing official to the Secretary of the department in which the Coast Guard is operating, or its designee.

PENALTIES

SEC. 105. (a) Any person who violates any provision of this title, or of the regulations promulgated under this title, or a permit issued

under this title shall be liable to a civil penalty of not more than \$50,000 for each violation to be assessed by the Administrator. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

(b) In addition to any action which may be brought under subsection (a) of this section, a person who knowingly violates this title, regulations promulgated under this title, or a permit issued under this title shall be fined not more than \$50,000, or imprisoned for not more than one year, or both.

(c) For the purpose of imposing civil penalties and criminal fines under this section, each day of a continuing violation shall constitute a separate offense as shall the dumping from each of several vessels, or other sources.

(d) The Attorney General or his delegate may bring actions for equitable relief to enjoin an imminent or continuing violation of this title, of regulations promulgated under this title, or of permits issued under this title, and the district courts of the United States shall have jurisdiction to grant such relief as the equities of the case may require.

(e) A vessel, except a public vessel within the meaning of section 13 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1163), used in a violation, shall be liable in rem for any civil penalty assessed or criminal fine imposed and may be proceeded against in any district court of the United States having jurisdiction thereof; but no vessel shall be liable unless it shall appear that one or more of the owners, or bareboat charterers, was at the time of the violation a consenting party or privy to such violation.

(f) If the provisions of any permit issued under section 102 or 103 are violated, the Administrator or the Secretary, as the case may be, may revoke the permit or may suspend the permit for a specified period of time. No permit shall be revoked or suspended unless the permittee shall have been given notice and opportunity for a hearing on such violation and proposed suspension or revocation.

(g) (1) Except as provided in paragraph (2) of this subsection any person may commence a civil suit on his own behalf to enjoin any person, including the United States and any other governmental instrumentality or agency (to the extent permitted by the eleventh amendment to the Constitution), who is alleged to be in violation of any prohibition, limitation, criterion, or permit established or issued by or under this title. The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such prohibition, limitation, criterion, or permit, as the case may be.

(2) No action may be commenced—

(A) prior to sixty days after notice of the violation has been given to the Administrator or to the Secretary, and to any alleged

violator of the prohibition, limitation, criterion, or permit; or

(B) if the Attorney General has commenced and is diligently prosecuting a civil action in a court of the United States to require compliance with the prohibition, limitation, criterion, or permit; or

(C) if the Administrator has commenced action to impose a penalty pursuant to subsection (a) of this section, or if the Administrator, or the Secretary, has initiated permit revocation or suspension proceedings under subsection (f) of this section; or

(D) if the United States has commenced and is diligently prosecuting a criminal action in a court of the United States or a State to redress a violation of this title.

(3) (A) Any suit under this subsection may be brought in the judicial district in which the violation occurs.

(B) In any such suit under this subsection in which the United States is not a party, the Attorney General, at the request of the Administrator or Secretary, may intervene on behalf of the United States as a matter of right.

(4) The court, in issuing any final order in any suit brought pursuant to paragraph (1) of this subsection may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(5) The injunctive relief provided by this subsection shall not restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or limitation or to seek any other relief (including relief against the Administrator, the Secretary, or a State agency).

(h) No person shall be subject to a civil penalty or to a criminal fine or imprisonment for dumping materials from a vessel if such materials are dumped in an emergency to safeguard life at sea. Any such emergency dumping shall be reported to the Administrator under such conditions as he may prescribe.

RELATIONSHIP TO OTHER LAWS

SEC. 106. (a) After the effective date of this title, all licenses, permits, and authorizations other than those issued pursuant to this title shall be void and of no legal effect, to the extent that they purport to authorize any activity regulated by this title, and whether issued before or after the effective date of this title.

(b) The provisions of subsection (a) shall not apply to actions taken before the effective date of this title under the authority of the Rivers and Harbors Act of 1899 (30 Stat. 1151), as amended (33 U.S.C. 401 et seq.).

(c) Prior to issuing any permit under this title, if it appears to the Administrator that the disposition of material, other than dredged material, may adversely affect navigation in the territorial sea of the United States, or in the approaches to any harbor of the United States, or may create an artificial island on the Outer Continental Shelf, the Administrator shall consult with the Secretary and no permit shall be issued if the Secretary determines that navigation will be unreasonably impaired.

(d) After the effective date of this title, no State shall adopt or enforce any rule or regulation relating to any activity regulated by

this title. Any State may, however, propose to the Administrator criteria relating to the dumping of materials into ocean waters within its jurisdiction, or into other ocean waters to the extent that such dumping may affect waters within the jurisdiction of such State, and if the Administrator determines, after notice and opportunity for hearing, that the proposed criteria are not inconsistent with the purposes of this title, may adopt those criteria and may issue regulations to implement such criteria. Such determination shall be made by the Administrator within one hundred and twenty days of receipt of the proposed criteria. For the purposes of this subsection, the term "State" means any State, interstate or regional authority, Federal territory or Commonwealth or the District of Columbia.

(e) Nothing in this title shall be deemed to affect in any manner or to any extent any provision of the Fish and Wildlife Coordination Act as amended (16 U.S.C. 661-666c).

ENFORCEMENT

SEC. 107. (a) The Administrator or the Secretary, as the case may be, may, whenever appropriate, utilize by agreement, the personnel, services and facilities of other Federal departments, agencies, and instrumentalities, or State agencies or instrumentalities, whether on a reimbursable or a nonreimbursable basis, in carrying out his responsibilities under this title.

(b) The Administrator or the Secretary may delegate responsibility and authority for reviewing and evaluating permit applications, including the decision as to whether a permit will be issued, to an officer of his agency, or he may delegate, by agreement, such responsibility and authority to the heads of other Federal departments or agencies, whether on a reimbursable or nonreimbursable basis.

(c) The Secretary of the department in which the Coast Guard is operating shall conduct surveillance and other appropriate enforcement activity to prevent unlawful transportation of material for dumping, or unlawful dumping. Such enforcement activity shall include, but not be limited to, enforcement of regulations issued by him pursuant to section 108, relating to safe transportation, handling, carriage, storage, and stowage. The Secretary of the Department in which the Coast Guard is operating shall supply to the Administrator and to the Attorney General, as appropriate, such information of enforcement activities and such evidentiary material assembled as they may require in carrying out their duties relative to penalty assessments, criminal prosecutions, or other actions involving litigation pursuant to the provisions of this title.

REGULATIONS

SEC. 108. In carrying out the responsibilities and authority conferred by this title, the Administrator, the Secretary, and the Secretary of the department in which the Coast Guard is operating are authorized to issue such regulations as they may deem appropriate.

INTERNATIONAL COOPERATION

SEC. 109. The Secretary of State, in consultation with the Administrator, shall seek effective international action and cooperation to insure protection of the marine environment, and may, for this purpose,

formulate, present, or support specific proposals in the United Nations and other competent international organizations for the development of appropriate international rules and regulations in support of the policy of this Act.

EFFECTIVE DATE AND SAVINGS PROVISION

SEC. 110. (a) *This title shall take effect six months after the date of the enactment of this Act.*

(b) *No legal action begun, or right of action accrued, prior to the effective date of this title shall be affected by any provision of this title.*

SEC. 111. *There are hereby authorized to be appropriated not to exceed \$3,600,000 for fiscal year 1973, and not to exceed \$5,500,000 for fiscal year 1974, for the purposes and administration of this title, and for succeeding fiscal years only such sums as the Congress may authorize by law.*

SEC. 112. *The Administrator shall report annually, on or before June 30 of each year, with the first report to be made on or before June 30, 1973 to the Congress, on his administration of this title, including recommendations for additional legislation if deemed necessary.*

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

SEC. 201. *The Secretary of Commerce, in coordination with the Secretary of the Department in which the Coast Guard is operating and with the Administrator shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of monitoring and research regarding the effects of the dumping of material into ocean waters or other coastal waters where the tide ebbs and flows or into the Great Lakes or their connecting waters and shall report from time to time, not less frequently than annually, his findings (including an evaluation of the short-term ecological effects and the social and economic factors involved) to the Congress.*

SEC. 202. (a) *The Secretary of Commerce, in consultation with other appropriate Federal departments, agencies, and instrumentalities shall, within six months of the enactment of this Act, initiate a comprehensive and continuing program of research with respect to the possible long-range effects of pollution, overfishing, and man-induced changes of ocean ecosystems. In carrying out such research, the Secretary of Commerce shall take into account such factors as existing and proposed international policies affecting oceanic problems, economic considerations involved in both the protection and the use of the oceans, possible alternatives to existing programs, and ways in which the health of the oceans may best be preserved for the benefit of succeeding generations of mankind.*

(b) *In carrying out his responsibilities under this section, the Secretary of Commerce, under the foreign policy guidance of the President and pursuant to international agreements and treaties made by the President with the advice and consent of the Senate, may act alone or in conjunction with any other nation or group of nations, and shall make known the results of his activities by such channels of communication as may appear appropriate.*

(c) *In January of each year, the Secretary of Commerce shall report to the Congress on the results of activities undertaken by him pursuant to this section during the previous fiscal year.*

(d) *Each department, agency, and independent instrumentality of the Federal Government is authorized and directed to cooperate with the Secretary of Commerce in carrying out the purposes of this section and, to the extent permitted by law, to furnish such information as may be requested.*

(e) *The Secretary of Commerce, in carrying out his responsibilities under this section, shall, to the extent feasible utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities (including those of the Coast Guard for monitoring purposes), and is authorized to enter into appropriate inter-agency agreements to accomplish this action.*

SEC. 203. The Secretary of Commerce shall conduct and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and to promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, and studies for the purpose of determining means of minimizing or ending all dumping of materials within five years of the effective date of this Act.

SEC. 204. There are authorized to be appropriated for the first fiscal year after this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out this title, but the sums appropriated for any such fiscal year may not exceed \$6,000,000.

TITLE III—MARINE SANCTUARIES

SEC. 301. Notwithstanding the provisions of subsection (h) of section 3 of this Act, the term "Secretary", when used in this title, means Secretary of Commerce.

SEC. 302. (a) The Secretary, after consultation with the Secretaries of State, Defense, the Interior, and Transportation, the Administrator, and the heads of other interested Federal agencies, and with the approval of the President, may designate as marine sanctuaries those areas of the ocean waters, as far seaward as the outer edge of the Continental Shelf, as defined in the Convention of the Continental Shelf (15 U.S.T. 74; TIAS 5578), of other coastal waters where the tide ebbs and flows, or of the Great Lakes and their connecting waters, which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or esthetic values. The consultation shall include an opportunity to review and comment on a specific proposed designation.

(b) Prior to designating a marine sanctuary which includes waters lying within the territorial limits of any State or superjacent to the subsoil and seabed within the seaward boundary of a coastal State, as that boundary is defined in section 2 of title I of the Act of May 22, 1953 (67 Stat. 29), the Secretary shall consult with, and give due consideration to the views of, the responsible officials of the State involved. As to such waters, a designation under this section shall become effective sixty days after it is published, unless the Governor of

any State involved shall, before the expiration of the sixty-day period, certify to the Secretary that the designation, or a specified portion thereof, is unacceptable to his State, in which case the designated sanctuary shall not include the area certified as unacceptable until such time as the Governor withdraws his certification of unacceptability.

(c) When a marine sanctuary is designated, pursuant to this section, which includes an area of ocean waters outside the territorial jurisdiction of the United States, the Secretary of State shall take such actions as may be appropriate to enter into negotiations with other Governments for the purpose of arriving at necessary agreements with those Governments, in order to protect such sanctuary and to promote the purposes for which it was established.

(d) The Secretary shall submit an annual report to the Congress, on or before November 1 of each year, setting forth a comprehensive review of his actions during the previous fiscal year undertaken pursuant to the authority of this section, together with appropriate recommendation for legislation considered necessary for the designation and protection of marine sanctuaries.

(e) Before a marine sanctuary is designated under this section, the Secretary shall hold public hearings in the coastal areas which would be most directly affected by such designation, for the purpose of receiving and giving proper consideration to the views of any interested party. Such hearings shall be held no earlier than thirty days after the publication of a public notice thereof.

(f) After a marine sanctuary has been designated under this section, the Secretary, after consultation with other interested Federal agencies, shall issue necessary and reasonable regulations to control any activities permitted within the designated marine sanctuary, and no permit, license, or other authorization issued pursuant to any other authority shall be valid unless the Secretary shall certify that the permitted activity is consistent with the purposes of this title and can be carried out within the regulations promulgated under this section.

(g) The regulations issued pursuant to subsection (f) shall be applied in accordance with recognized principles of international law, including treaties, conventions, and other agreements to which the United States is signatory. Unless the application of the regulations is in accordance with such principles or is otherwise authorized by an agreement between the United States and the foreign State of which the affected person is a citizen or, in the case of the crew of a foreign vessel, between the United States and flag State of the vessel, no regulation applicable to ocean waters outside the territorial jurisdiction of the United States shall be applied to a person not a citizen of the United States.

SEC. 303. (a) Any person subject to the jurisdiction of the United States who violates any regulation issued pursuant to this title shall be liable to a civil penalty of not more than \$50,000 for each such violation, to be assessed by the Secretary. Each day of a continuing violation shall constitute a separate violation.

(b) No penalty shall be assessed under this section until the person charged has been given notice and an opportunity to be heard. Upon failure of the offending party to pay an assessed penalty, the Attorney

General, at the request of the Secretary, shall commence action in the appropriate district court of the United States to collect the penalty and to seek such other relief as may be appropriate.

(c) A vessel used in the violation of a regulation issued pursuant to this title shall be liable in rem for any civil penalty assessed for such violation and may be proceeded against in any district court of the United States having jurisdiction thereof.

(d) The district courts of the United States shall have jurisdiction to restrain a violation of the regulations issued pursuant to this title, and to grant such other relief as may be appropriate. Actions shall be brought by the Attorney General in the name of the United States, either on his own initiative or at the request of the Secretary.

Sec. 304. There are authorized to be appropriated for the fiscal year in which this Act is enacted and for the next two fiscal years thereafter such sums as may be necessary to carry out the provisions of this title, including sums for the costs of acquisition, development, and operation of marine sanctuaries designated under this title, but the sums appropriated for any such fiscal year shall not exceed \$10,000,000.

That the House recede from its disagreement to the amendment of the Senate to the title of the bill, and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the amendment of the Senate to the title of the bill, insert the following:

An Act to regulate the transportation for dumping, and the dumping, of material into ocean waters, and for other purposes.

And the Senate agree to the same.

EDWARD A. GARMATZ,
JOHN D. DINGELL,
ALTON LENNON,
THOMAS M. PELLY,
CHARLES A. MOSIER,

Managers on the Part of the House,

WARREN G. MAGNUSON,
ERNEST F. HOLLINGS,
PHILIP A. HART,
TED STEVENS,

Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 9727), to regulate the dumping of material in the oceans, coastal and other waters, and for other purposes, submit the following joint statement to the House and to the Senate in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment; it also amended the title of the bill. The committee of conference has agreed to a substitute for both the House bill and the Senate amendment. Except for technical, clarifying, and conforming changes, the following statement explains the differences between the House bill and the Senate amendments thereto.

PROVISIONS OF THE CONFERENCE SUBSTITUTE

SEC. 3(b). As enacted, the House bill extended the coverage of this act to oceans, estuarine waters, other coastal waters affected by the tides, and the Great Lakes. The Senate amendment provided coverage only to the oceans, coastal and other waters beyond the territorial jurisdiction of the United States, insofar as the act regulates dumping of materials. The conferees resolved the conflict by drawing the line at the "base line"—the line from which the 3- and 12-mile limits are computed, as provided for in the Convention on the Territorial Sea and the Contiguous Zone, signed in Geneva on April 29, 1958. This action was taken not only in recognition of the fact that the ocean waters should be treated as a single unit, but also because of the potential administrative and enforcement difficulties attendant upon making the permit provisions applicable only to ocean waters outside the territorial sea. Dumping of materials within internal waters, that is, inside the base line is, according to information provided to the conference, adequately covered by existing and proposed legislation regulating water quality, and need not be covered under this act.

SEC. 3(f). The House bill specifically included "radioactive materials" under the definition in subsection (c) of "material" covered by the act; the Senate bill did not. The conference resolved to include such material, but excluded, in subsection (f) the coverage of such material where it passes through outfalls already regulated under the terms of the Atomic Energy Act of 1954, as amended. Thus, discharges from nuclear powerplant outfalls, to the extent that they contain quantities of radioactive material which are subject to regulation and control by the Atomic Energy Commission, need not be also covered by a dumping permit issued under the terms of this act.

SEC. 102. Organic fish wastes (derived from commercial fishing and cannery operations) while not specifically listed as such, were encompassed within the description of "material" in the House bill, but were specifically excluded from coverage in the Senate version. This conflict was resolved by the conferees by allowing such material, including fish, shellfish, crustaceans, other marine life or parts thereof, to be dumped without a permit from either floating or fixed facilities unless (a) placed in harbors or other protected or enclosed coastal waters, or (b) where the Administrator made a positive finding that such material could endanger health, the environment, or ecological systems, placed in a specific location. He may make such a finding only after investigations on the location involved disclosed that such effects might be anticipated. In this case, the Administrator might require any person wishing to deposit such materials to obtain a general or specific permit to do so, although materials placed elsewhere may continue to be placed without such a permit. The exception relating to harbor and other enclosed waters is intended to prohibit the dumping of such materials in areas where tidal flushing action may be inadequate to disperse quantities of discarded fish wastes within a reasonable period of time.

SEC. 103. The House bill assigned the responsibility for issuing dumping permits to the Administrator of the Environmental Protection Agency in all cases except those involving dredge and fill operations; in this instance the U.S. Army Corps of Engineers, which presently is responsible for such operations, was to continue in its responsibilities. As to Corps-issued dredge permits, the Administrator was given power to designate areas which might not be used as disposal sites. Material could be placed in those areas only where the Secretary of the Army certified that no economically feasible alternative was reasonably available.

The Senate alternative was to concentrate the disposal permit issuing responsibilities in EPA, but permitted the Secretary of the Army to request the issuance of such a permit, and indicated that the permit would issue unless the Administrator made a positive finding that the material would adversely affect municipal water supplies, shellfish beds, wildlife, fisheries or recreation areas.

This extremely complex and controversial question was resolved by the committee on conference by allowing the Secretary to issue permits for transportation of dredged material for dumping, following the criteria set down by the Administrator under section 102 (a) of the act.

Before issuing a permit, the Secretary must notify the Administrator of his intention to do so, and may proceed unless the Administrator disagrees with the determination of the Secretary as to the proper application of EPA criteria on dumping effects or as to EPA restrictions relative to critical areas. It is expected that the first notice by the Secretary to the Administrator of his intent to issue a permit shall be from the date of public notice. In making the determination, the Secretary is required to evaluate the potential effect of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce of the United States. It is expected that

the Secretary, in selecting a site for the disposal of dredged material, will select economically feasible sites.

The Secretary is authorized to request a waiver from EPA in any case in which he finds that there is no economically feasible site which would not violate the EPA criteria or the EPA restrictions as to critical areas, and the Administrator must grant such a waiver unless he finds that the proposed dumping will result in an unacceptably adverse impact upon the area concerned.

The section also authorized the Secretary to handle Federal dredging projects through the use of regulatory powers in lieu of the permit procedures described above, subject to the same general requirements for issuance of permits.

This system, as agreed upon by the conferees, leaves to the Secretary of the Army the permit authority for disposal of dredged material, which would be used in connection with his existing authority to issue permits for dredging. The Secretary is required to utilize this disposal permit authority consistent (1) with the criteria established between the Administrator as to the effects of the proposed dumping and (2) with the restrictions established by the Administrator relating to critical areas.

It is expected that permit applications will be processed promptly and that there will be a minimum of delay in agency review of these applications before a final decision has been made. While the Administrator is given a 30 day review period over proposed waivers by the Corps of Engineers, this does not in any way indicate that the review period should or could be protracted once all of the information required has been received and processed. It is also anticipated that, to the greatest extent practicable, the permit review process will be consolidated to allow review and decision on all aspects of the proposed permit operations known at the time application is made by the proposed permittee. The permit review process was not designed, and is not intended to be used, as a bottleneck to prevent otherwise meritorious activities from being carried out.

To facilitate processing of permit applications the Administrator is expected to review the requirements for maintenance dredging of non-Federal dock and berthing facilities contiguous to the authorized Federal project at the same time as consideration is given to the Federal project requirements. The Secretary is also encouraged to use general dredging permits to maintain such non-Federal facilities where the work is in the same general area and the character of the work is similar.

The conferees fully expect that the Secretary is capable of performing, and will perform, his duties reasonably and intelligently, and foresee very few occasions where the Administrator would disagree with the Secretary in his determinations relative to the two specific points raised. Nevertheless, to take care of the rare case, subsection (c) provides that in the case of such a disagreement, the Administrator's determination shall prevail.

As the conferees expect the Secretary to perform his duties reasonably and intelligently, they are also confident that the Administrator will perform likewise and not whimsically or capriciously. It is, therefore, expected that it will be a rare occasion when the subsection (c) disagreement provision will be invoked.

In any case, where the Secretary finds that there is no economically feasible alternative to a site which, if used, would violate either the "effects" criteria or the "critical area" restrictions, whether that violation determination is made initially by the Secretary or results from a determination by the Administrator under subsection (c), the Secretary is enjoined to certify that fact and to request a waiver of the disabling provision. That waiver must be granted by the Administrator, without option on his part, unless he finds that the result of the dumping would be so unacceptable in its adverse impact on one of the specifically named considerations as to justify denial of the permit which could terminate the Federal project.

It is intended that designation of critical areas by the Administrator shall be exercised with circumspection. Such confined areas are expected to be limited in size and numbers. For the most part, the conferees assume that existing sites for the disposal of dredged material will continue to be used and available. Where this proves impractical, the review and waiver provisions of the bill would be used.

It is expected that until such time as economic and feasible alternative methods for disposal of dredge material are available, no unreasonable restrictions shall be imposed on dredging activities essential for the maintenance of interstate and foreign commerce, and that, consistent with the intent of this act, the disposal activities of private dredgers and the Corps of Engineers will be treated similarly.

Sec. 105. The House bill contained a provision allowing "finders' fees" to citizens notifying enforcement officials of criminal violations of the act. This was eliminated by the Senate. The Senate version was accepted by the conferees.

Both bills contained citizens' action provisions allowing the public to intervene to enjoin violations of the act; the House allowed such actions to be brought according to existing requirements under the Judicial Code, whereas the Senate version permitted actions to be brought only in the judicial district where the violation occurred. The House version was accepted by the conferees.

Sec. 106. As it passed the House, H.R. 9727 contained language permitting any State, territory, or subdivision to impose additional requirements to those imposed by the act. The Senate restricted the right to cases in which a State proposed additional criteria, which were accepted by the Administrator and thereafter treated as Federal. The Senate version of this provision was adopted by the conference.

Sec. 111. The House version of the bill contained an open-ended authorization, whereas the Senate version authorized not to exceed \$3,600,000 for fiscal year 1973, and \$5,500,000 for fiscal year 1974. The conference adopted the Senate version, and added that later fiscal years would be provided for by subsequent congressional action.

Sec. 112. The Senate version of the bill provided for annual reports by EPA on the administration of title I of the bill, while the House was silent on the issue. The conferees adopted the Senate language, with the reports to begin in 1973.

TITLE II—COMPREHENSIVE RESEARCH ON OCEAN DUMPING

The House version of H.R. 9727 provided for research by the Secretary of Commerce, the Department in which the National Oceanic

and Atmospheric Administration is currently operating, on the effects of dumping and on global monitoring of ocean problems. It authorized \$2 million for these purposes. The Senate bill increased the authorization to \$12 million, added a reporting requirement and instructed the Secretary of Commerce to do research to determine means of ending all dumping within 5 years. The conferees decreased the authorization to \$6 million, incorporated an annual reporting requirement and instructed the Secretary, in cooperation with other interested agencies, to do research aimed at reducing or eliminating ocean dumping within 5 years.

TITLE III—MARINE SANCTUARIES

The House bill incorporated a title allowing the establishment of marine sanctuaries by the Secretary of Commerce, acting through NOAA. The concurrence of the governors of affected States was required where the proposed sanctuary fell within State jurisdiction, either territorially or as to resources. The Senate bill was silent on the subject.

The committee on conference adopted the House approach, but modified the language in some respects to make it clear that the regulations and enforcement activities under the title would apply to non-citizens of the United States only to the extent that such persons were subject to U.S. jurisdiction, either by virtue of accepted principles of International law, or as a result of specific intergovernmental agreements.

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